

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ALABAMA

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JBCW ENTERPRISES, LLC, :
SILENUS, LLC, ACS CONSULTING, INC., :
And COAST DIAGNOSTICS, LLC, : Case No: 1:24-CV-00047-MU
:
Plaintiffs, : **MOTION TO DISMISS FOR**
vs. : **IMPROPER SERVICE PURSUANT**
: **TO RULE 12(B)(5)**
:
SONNY PATEL, individually, :
ALCHEME LLC, :
CALVIN J. CALVIN, individually, :
and CALVIN & ASSOCIATES, INC., :
:
Defendants. :
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MOTION TO DISMISS FOR IMPROPER SERVICE PURSUANT TO RULE 12(B)(5)

AND NOW, comes the Defendant, Calvin J. Calvin, by and through himself, *pro se*, to file the instant motion to dismiss and in support thereof avers as follows:

I. INTRODUCTION

1. Defendant, Calvin J. Calvin, is writing to respectfully request that the Court dismiss the complaint filed against me in the above-captioned case due to improper service of process.

2. The Defendant was not properly served with the complaint in the instant matter in any manner whatsoever; the manner in which service was effectuated fails to comply with the Federal Rules of Civil Procedure, rendering the service defective and in violation of the Defendant's constitutional rights to due process.

II. LEGAL STANDARDS

3. Under Rule 4 of the Federal Rules of Civil Procedure, service of process may be accomplished by a variety of methods, including personal service, delivery to an authorized agent, or through

state law procedures. It is essential, however, that service be conducted in a manner that ensures the defendant receives actual notice of the lawsuit and an opportunity to respond.

4. One such case that emphasizes the importance of service of process ensuring the defendant receives actual notice of the lawsuit and an opportunity to respond is *Greene v. Lindsey*, 456 U.S. 444 (1982).

5. In this case, the United States Supreme Court held that service of process must be reasonably calculated to provide actual notice and an opportunity to respond, in accordance with the Due Process Clause of the Fourteenth Amendment. The Court emphasized that the fundamental purpose of service of process is to ensure that defendants are made aware of the pending legal action against them, thus affording them the opportunity to defend themselves in court. *Greene v. Lindsey*, 456 U.S. 444 (1982).

6. This principle has been reiterated and applied in numerous subsequent cases across federal and state courts, reaffirming the fundamental requirement that service of process must be conducted in a manner that guarantees the defendant receives actual notice of the lawsuit and an opportunity to respond. *Rio Properties, Inc. v. Rio International Interlink*, 284 F.3d 1007 (9th Cir. 2002).

III. QUESTION PRESENTED

7. Should Defendant's Motion To Dismiss For Improper Service Be GRANTED?

(Suggested Answer: Yes)

IV. ARGUMENT

8. In this case, the service of process was deficient for the following reasons:

Lack of Personal Service: The complaint was not personally served upon the Defendant as required by Rule 4(e)(2)(A). Instead, it was delivered to a virtual office-share space as

admitted by the Plaintiff in their “proof of service”, which does not constitute valid service under federal rules. The address where the service was allegedly made was neither the Defendant’s “actual office or usual place of business” as required by the rules thereby constituting invalid and improper service of process.

Failure to Serve an Authorized Agent: Alternatively, if service was intended to be effectuated upon an authorized agent or representative, such service was not properly executed in accordance with Rule 4(e)(2)(C). The individual upon whom the complaint was delivered is not an authorized agent authorized to accept service on my behalf. The person that is identified in the Plaintiff’s proof of service is not even named and is instead identified as “John Doe - Refused To State Full Name”; no one has been authorized to accept service on behalf of the Defendant and therefore the Plaintiff’s service of process is defective in this regard as well.

Noncompliance with State Law Procedures: Additionally, if service was attempted pursuant to state law procedures, it still fails to meet the requirements outlined in Rule 4. The applicable state law, the Alabama Rules of Civil Procedure (Title 6 of the Alabama Code), mandates that a Defendant be personally served or served through an appointed agent. The method of service employed in this case does not adhere to these requirements.

9. Because the plaintiff failed to effectuate proper service of process in accordance with the Federal Rules of Civil Procedure, Defendant has not been afforded the opportunity to respond to the allegations against me in a timely manner, thereby depriving the Defendant of my right to due process under the law.

10. For these reasons, Defendant respectfully requests that the Court dismiss the complaint against the Defendant. Alternatively, if the Court deems it appropriate, I request an extension of time to respond to the complaint following proper service.

VI. CONCLUSION

WHEREFORE, based on the foregoing, it is hereby respectfully that this Honorable Court GRANT this motion to dismiss for improper service for the reasons set forth herein.

DATED: April 8, 2024

Respectfully Submitted,



UNITED STATES DISTRICT COURT
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PROPOSED ORDER

AND NOW, on this _____ day of _____, 2024, upon consideration of the Defendant's Motion To Dismiss For Improper Service, it is hereby ORDERED that said motion is hereby GRANTED.

BY THE COURT: